IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

APPEAL FROM ORDER NO.801 OF 2005
IN
NOTICE OF MOTION NO.5032 OF 2003
IN
L.C. SUIT NO.6209 OF 2003

Babu Mudanna Shetty — Appellant
vs.
The Municipal Corporation of
Gr. Mumbai & ors. — Respondents

Mr.P.K.Dhakephalkar with Mr.B.P.Shukla for the appellant.

Ms.Geeta Jogalekar for the respondent no.1.

Mr.Sanjay Jain with Mr.Swapnil Bangur i/b. A.V.Jain & Associates for the respondent no.2.

CORAM : B.H. MARLAPALLE,J.

DATED : 31st August 2005

P.C.

Heard Mr.P.K.Dhakephalkar with Mr.Shukla, the learned counsel for the appellant-plaintiff who has filed L.C.Suit No.6209 of 2003 challenging the order passed by the Assistant Commissioner, R/South ward office of the Bombay Municipal Corporation on 13.12.2003 pursuant to the notice issued under section 351 of the Mumbai Municipal Corporation Act, 1888 on 24.11.2003. In the said suit, it was contended that by an agreement dated 13.5.1991 the plaintiff had purchased shop nos. 1 and 2 located in the Milap Co-operative Housing Society

Limited and in the said rooms a hotel/restaurant by name "Pritam" restaurant was being conducted by the plaintiff. The B.M.C. issued a notice on or about 6.11.2003 in respect of the purportedly unauthorised structure on the north side open space covered with M.S. angles frame and roofing of A.C. sheets with side walls in brick masonary 10mx2.5 m. and rear side open space of the building covered with M.S.angle and A.C. sheets with side walls in brick masonary admeasuring 11m x 3.05 mt. Reply to this notice was submitted by the plaintiff on 12.11.2003 and finally after considering the said reply and the documents relied upon, the Assistant Commissioner was pleased to pass the order which is the subject matter of challenge in the pending Suit.

2. Notice of Motion no.5032/2003 moved in the said Suit for temporary injunction has been dismissed by the impugned order dated 21.7.2005.

3. There is no dispute that shop nos. 1 and 2 were purchased by the plaintiff from Vinod Builders and there is no dispute in respect of the said shops. The unauthorised structure which is the subject matter of the pending Suit has been put up on the open space on rear side and the plaintiff claimed that this open space was purchased by him on 13.5.1991 from the very same builder. The Assistant Municipal Commissioner

considered the documents submitted by the plaintiff and recorded a finding that the suit structures were not existing before the datum line and, therefore, they are required to be demolished pursuant to the notice issued under section 351 of the M.M.C.Act. The learned Judge of the trial Court again considered the documents relied upon by the plaintiff and noted that the assessment extract at Exhibit "C" indicated that the suit sheds were assessed for the first time in the year 1991 and recorded a conclusion that when shop nos. 1 and 2 were purchased by the plaintiff in the year 1991, prima facie, the aid sheds were not in existence. The agreement by which shop nos. 1 and 2 were purchased was placed on record which could have given some proof as to whether the suit structure existed in the year 1991. City Survey map of city survey no.425 produced at Exhibit "1" was also considered by the trial Court and a prima facie finding has been recorded that the suit shed is not existence even as per the suit map in the year 1980. Even in the agreement executed on or about 13.5.1991 did not indicate the existence of brick walls of the suit sheds. Even in the agreement dated 13.5.1991 there is a mention of a shed and the notice issued by the Corporation under Section 351 of the M.M.C. Act pertains to a structure which implies that the shed so referred has been converted into the suit structure by constructing brick masonary walls and A.C.

sheets roof and, obviously, without obtaining permission from the Corporation. Assessment of the suit structure for levying property tax does not, prima facie, make it an authorised structure. The trial Court has also noted that from shop nos. 1 and 2 there were doors leading to the suit structures and it is possible that the plaintiff made these doors after converting the shed into the structure. These prima facie findings recorded by the trial Court cannot be termed as perverse or illegal on any count and, therefore, the trial Court rightly declined the prayer for temporary injunction.

No interference is called for in the said order.

4. The appeal is dismissed in limine.

5. Ad-interim order granted earlier stands vacated.

6. The learned counsel for the appellant submitted an oral application to continue the ad-interim order fro two weeks.

7. The prayer is hereby rejected.

8. Civil Application does not survive.

(B.H. MARLAPALLE,J.)